

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER ZIEMBA, :
 :
 Plaintiff : **CIVIL ACTION NO. 3:23-423**
 :
 v. : **(JUDGE MANNION)**
 :
 JUDGE RUSSELL D. SHURTLEFF, :
 :
 Defendant :

ORDER

Pending before the court is the report of Magistrate Judge Susan E. Schwab which recommends that the instant action be dismissed. (Doc. 9). No objections have been filed by the plaintiff.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept,

or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

By way of background, the plaintiff was involved in criminal proceedings in Wyoming County, Pennsylvania. He was convicted after a trial by jury and was subsequently sentenced by the only defendant named in this action, Judge Russell D. Shurtleff. The plaintiff filed a motion to vacate the charges against him, which was denied by Judge Shurtleff. The plaintiff filed the instant action pursuant to 42 U.S.C. §1983 alleging that the denial of his motion to vacate by Judge Shurtleff violated his constitutional rights. Upon review of the plaintiff's complaint, in a very thorough report, Judge Schwab found that Judge Shurtleff is entitled to immunity both in his official and individual capacities.

The petitioner has failed to file any objections to Judge Schwab's report and recommendation. Upon review of the report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Schwab to her conclusions. As such, the court will adopt the report and recommendation in its entirety as the decision of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Schwab (**Doc. 9**) is
ADOPTED IN ITS ENTIRETY AS THE DECISION OF THE COURT.
- (2) The instant action is **DISMISSED** for the plaintiff's failure to state a claim upon which relief can be granted.
- (3) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: February 12, 2024
23-423-01